

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION**

**PHILLIP MCGILBERRY**

**PLAINTIFF**

**v.**

**No. 4:16CV40-SA-DAS**

**TIMOTHY MORRIS, ET AL.**

**DEFENDANTS**

**JUDGMENT**

Having considered the file and records in this action, the court finds that the Report and Recommendation of the United States Magistrate Judge was duly served by mail upon the *pro se* plaintiff at his last known address; that more than fourteen days have elapsed since service of the Report and Recommendation; and that no objection to the Report and Recommendation has been filed or served by any party. The magistrate judge's Report and Recommendation should therefore be approved and adopted as the opinion of the court. It is ordered:

1. That the Report and Recommendation of the United States Magistrate Judge is hereby **APPROVED AND ADOPTED** as the opinion of the court.
2. That Superintendent Earnest Lee is **DISMISSED** with prejudice from this case for failure to state a claim upon which relief could be granted.
3. The plaintiff's claims against defendants Warden Timothy Morris and Johnnie Denmark for failure to protect will **PROCEED**.
4. Likewise, McGilberry's claims against the as-yet-unnamed guards for failure to provide timely medical attention will **PROCEED**.

**SO ORDERED**, this, the 31st day of March, 2017.

/s/ Sharion Aycock  
**U.S. DISTRICT JUDGE**